

## **REMARKS**

The above amendments and these remarks are responsive to the final Office action dated March 21, 2006. Claims 1-13 are pending in the application. Claims 1-13 are rejected. By way of the present amendment, claims 8-10 are cancelled, and claims 1, 4 and 11 are amended. In view of the amendments above, and the remarks below, Applicant respectfully requests reconsideration of the rejected claims.

### **Rejection under 35 U.S.C. § 112**

Claim 4 stands rejected under 35 U.S.C. § 112 on the basis that the limitation "the container" in claim 4 has no antecedent basis. Applicant has amended claim 4 to recite "the storage portion", and suggest that as amended the elements of claim 4 have antecedent basis in claim 1. Applicant therefore respectfully request the withdrawal of the rejection of claim 4 under 35 U.S.C. § 112.

### **Rejections under 35 U.S.C. § 102**

Claims 1 to 5 and 9 stand rejected under 35 U.S.C. §102 in view of U.S. Patent No. 5,489,182 to Habicht. Applicant has amended claim 1 so as to include the limitations of former claims 8 through 10 and it is respectfully submitted that Habicht does not include either of "a storage portion comprising a box structure having a base, an upstanding rear wall, a pair of upstanding, opposed end walls, and an upstanding front wall to define an interior region for holding articles to be stored, the front wall having a section that is lower than the end walls to define an opening for access to the interior

region" nor "rails below said storage portion wherein said rails are extendible from a stowed position below the storage portion to a position extended from said storage portion to receive support articles to be stored". Applicant therefore respectfully submits that claim 1 as currently amended complies with 35 U.S.C. § 102 and requests that the Examiner's rejection be withdrawn.

Claims 2 to 5 derive patentable significance from the ultimate dependence on claim 1 as presently amended. In view of the foregoing comments, Applicant respectfully submits that claims 2 to 5 are not anticipated by Habicht due to claim 1 not be anticipated by Habicht in addition to the additional subject matter that claims 2 to 5 recite. Therefore, Applicant respectfully requests that the Examiner's anticipation rejection of claims 2 to 5 be withdrawn as well.

Claims 1 to 7 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 4,421,209 to Vermette et al. Due to the foregoing amendments to claim 1, Applicant respectfully submits that claims 1 to 7 are also not anticipated by Vermette et al. Applicant therefore respectfully requests that this rejection be withdrawn.

#### Rejections under 35 U.S. § 103

In view of the present amendments, Applicant respectfully submits that independent claim 1 as presently amended is not rendered obvious by any combination of the references cited by the Examiner. As previously set out, neither Habicht nor Vermette et al disclose a storage apparatus including a "storage portion comprising a box structure having a base, an upstanding rear wall, a pair of upstanding, opposed end walls,

and an upstanding front wall to define an interior region for holding article to be stored, the front wall having a section that is lower than the end walls to define an opening for access to the interior region" nor "rails below said storage portion, wherein said rails are extendable from a stowed position below the storage portion to a position extended from said storage portion to receive support articled to be stored". Accordingly, neither Habicht nor Vermette et al. anticipates or renders obvious the entirety of claim 1.

The Examiner has relied upon U.S. Patent No. D473,377 to Chandaria to assert that the additional features taught by former claim 8, now incorporated in claim 1, would have been obvious in view of Habicht and Chandaria. As previously submitted, Applicant respectfully submits that there would be no suggestion or motivation to combine the Chandaria reference with Habicht. Applicant respectfully redirects the Examiner's attention to MPEP § 2143.01 which states,

"The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990) ...

Although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so.' 916 F.2d at 682, 16 USPQ2d at 1432. See also *In re Fritch*, 972 F.2d 1260, 23 USPQ 2d 1780 (Fed. Cir. 1992) ..." [Emphasis Added]

In the present case, the Chandaria reference is neither in the field of the Applicant's endeavor, nor is it reasonably pertinent to the particular problem with which the present inventors were concerned. Conversely, the field of packaging fire logs is such

a different field from that of the present application that it would not logically have commended itself to an inventor's attention in considering the problem of the current application. It is submitted that a person in the field of elevatable storage devices could not reasonably be expected to look to fields as diverse as fire log packaging in solving the problem of enhancing the efficiency and cleanliness of the work space of a shop. Accordingly, the Applicant respectfully requests that the Examiner reconsider this rejection.

The design of Chandaria, being of a different field, would not commend itself to a person attempting to solve the problem of inventing a storage apparatus including a raiseable storage portion, nor would it be understood as being appropriate for use in the current application. A container for bulk packaging, by its very definition, is a structure that is used to enclose and contain the objects that are to be packaged. In the case of the container of Chardaria, such a container would be most commonly used when located on a floor proximate to a fireplace or wood furnace, so as to provide access to the container and the fire logs contained therein for use in a wood stove or fireplace. The container of the Chandaria reference would not be understood to be useful for being raised to an overhead position for holding loaded articles as such a container would not be required to be so raised during any normal use. There is not therefore a suggestion or motivation in the Chandaria reference to combine the container of Chandaria with Habicht to arrive at the claimed storage apparatus of claim 1.

Applicant submits that as there is no suggestion or motivation to combine Chandaria and Habicht, and in view of the fact that these two references are taken from

non analogous arts, any combination of these two is based on impermissible hindsight. Applicant submits that it would not be apparent, at the date of the invention, to a person of ordinary skill in the art that these two references would be able to be combined. As there is no suggestion or motivation to combine Chandaria with Habicht in these two references, the resultant combination of these two would not have been obvious at the time the application was filed. Applicant respectfully requests that the Examiner reconsider this rejection of claim 1 under 35 U.S.C. § 103(a).

The Examiner has also relied upon U.S. Patent No. 6,923,612 to Hansl to assert that the features of “rails below said storage portion wherein said rails are extendable from a stowed position below the storage portion to a position extended from said storage portion to receive and support articles to be stored” is obvious in view of a combination of Hansl and Habicht. By the present amendments, Applicant has amended the recitation of the rails to have a “position extended from said storage portion”.

Hansl does not include rails that extend from a stowed position below the storage portion to a position extended from said storage portion to receive support articles to be stored. Rather, the telescopic arms of Hansl extend from a central structure to retrieve articles stored in racks. Accordingly, when the telescopic arms of Hansl are extended or moved between a stowed position and an extended position, the stored load or storage portion is moved with the ends of the telescopic arms so as to facilitate placement and storage of the articles in the racks. This is distinctly different from the structure of the present application in that the extension of the arms from the stowed position to the position extended from the stored portion is accomplished without any corresponding

positional change of the storage portion.

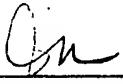
Accordingly, the telescopic arm arrangement of Hansl would not solve the problem to which the present application is directed, as telescopic arms which move the storage object, as in Hansl, would only serve to move the storage portion of the present storage apparatus and would not accordingly provide an additional surface to support larger articles as is provided by the arms of the present application. Therefore, a combination of Hansl and Habicht does not disclose these features of claim 1 as presently amended, and Applicant respectfully submits that claim is not obvious to a person of ordinary skill in the art at the time the invention was made. In view of the foregoing, Applicant respectfully requests that the Examiner reconsider the rejection of claim 1 under 35 U.S.C. § 103(a)

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 11-1540.

It is now believed that the subject patent application has been placed in condition for allowance, and such action is respectfully requested. If the Examiner has any questions or concerns, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned agent of record.

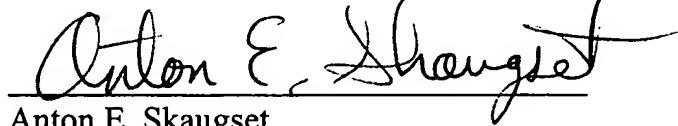
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Suzanne Lukas-Werner

Respectfully submitted,

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